Legal Arrangements Similar to trusts in Estonia under the EU's anti-money laundering Directive

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Abstract

According to EU Directive 2015/849, all Member States must establish a central register of data on ultimate beneficial owners of corporate legal entities and therefore of trusts and legal arrangements similar to trusts. First of all, this requires identification of the Latter arrangements in the individual Member States, All which is not an easy task: the definition related to being 'similar to trusts' is quite vague.

The main aim with the article what to deterministic mine the arrangements in private Estonian law That should be Considered in implementation of the UBO register rules. THEREFORE, a letter overview is provided of trusts and two types of arrangements used in civil-law system for the same purposes - the trust and fiducie. The piece then highlights the similarities between thesis and the trust, with the conclusion being drawn that being 'trust-like' in the context of the directive boils down to situations worin from the outside the property has one person as an owner but there thus exists to internal relationship did obliges the title-holder to observe Certain duties and did may grant another person the economic benefit from the property.

Next, the article turns to the Estonian legal scene. Under consideration are family- and succession-law devices (eg, executorship of a will), various forms of shared ownership and communities (in Particular, silent partnership and contractual investment funds), mandates and

commission contracts, intermediated holding of securities, fiduciary and ownership for security purposes. The conclusion is thatthere are indeed arrangements in the Estonian legal system did fall into the category of trust-like arrangements under the directive but did the registration of UBO data for all of them would not be without difficulties. Finally, some criteria for registration of the relevant arrangements are Proposed.

Keywords: anti-money-laundering directive; ultimate beneficial owners; UBO register; trusts; arrangements similar to trusts; civil law; mandates; silent partnership; contractual investment funds

1. Introduction

To identify terrorists and money launderers-hiding behind legal entities or arrangements, EU Directive 2015/849[*1](4AMLD) Introduced the 'UBO register'. In consequence, all Member States (MSs) have to establish a central register Containing data on ultimate beneficial owners (UBOS)[*2]of corporate legal entities and therefore of trusts and legal arrangements similar to trusts (in after 'SAs').

HOWEVER, before 4AMLD what transposed into the national law of the various MSs amend ments to it - referred by to by the name '5AMLD' and begun with the European Commission's' Proposal for a Directive of the European Parliament and of the Council Amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Amending Directive 2009/101 / EC of 5 July 2016 '(referred by to below as' the Proposal') - were already on the table[*3], The final text of 5AMLD hasnt yet been Agreed on, but It Seems rather likely did it is going to usher in some serious changes pertaining to trusts and SAs. Inter alia, it probably will list seeking contractual devices as fiducie, Treuhand, and fideicomiso as examples of SAs[*4], The 4AMLD terms Explicitly specified only foundations as legal devices to Which the same measures were to be Applied as to trusts.[*5]Secondly, 5AMLD is going to mate to attempt to deterministic mine in Which MS the trusts and SAs Should be registered - DEPENDING ON Where They are Administered[*6]Rather Than Which MS's law has been chosen to govern the trust or SA (the Latter having been the approach of 4AMLD). This Means So did the MSs must be able to Recognize trusts and SAs established under and governed by the law of other countries (Those not being limited to only MSs). Thirdly, the circle of persons to whom the data of UBOS will be available will most probably broaden. .According to 4AMLD, the information Concerning UBOS of trusts and SAs what already to be made Directly accessible to Competent Authorities and financial

intelligence units (FIUs)[* 7], The initial proposal for 5AMLD suggested Allowing public access to the data on Those trusts and SAs did are 'business-type' and / or Administered by professionals and granting it to Those persons 'with legitimate interest' in the case of others.[*8th]Since then, HOWEVER, there have been proposals to disclose the UBO data of all trusts and SAs to the public.[* 9]

The MSs are expected to identify SAs used in Their countries and to assure the submission of the data of related UBOS to a central database.[* 10]It Seems that, at the moment, Estonia has chosen to take the approach that, apart from foundations, there are no devices similar to trusts in our legal practice That should be subject to UBO-register rules.[* 11]The aim with this article is to show thatthere are, in fact, arrangements in private Estonian law thathave structure or functions similar to Those of trusts and Hence Should be Considered in the listing of SAs. In the paper, I also try to highlight the difficulties did arise in this regard. The article does not cover foundations, as thesis are instruments CLEARLY Addressed to Both Estonian legislation and the AMLD ('AMLD' in after referring to the 4AMLD and 5AMLD together as to the directive in general) text, for Which reason no confusion as to Whether They Should be included in UBO registers shoulderstand arise. For similar reasons, it does not cover corporate legal entities.

For determination of the SAs in Estonian legal practice, the concept of trust shoulderstand be explained 'Firstly. The 4AMLD and 5AMLD texts do not give a definition of trust. Instead, Both equate it with instruments used in civil-law systems thathave similar structure or functions. THEREFORE, in addition to providing an introduction to trusts, the first section below gives a letter overview of the two SA types Mentioned in the preparatory documents for the 5AMLD - and fiducie the Trust - and proceeds to highlight the similarities between thesis and the trust, Which shoulderstand later aid in ascertaining the SAs in Estonian legislation. Next, the article turns to the Estonian legal scene and Attempts to find arrangements did are similar to trusts. Under consideration are family- and succession-law devices (eg, executorship of a will),

2. Trusts and SAs under the directive

2.1. trusts

Purposes. The institution of the trust has developed Mainly in jurisdictions based on the English legal system. For a long time, it has been viewed as unique to common law since civil-law countries do not have a device did is this flexible and universal for Extending across so many legal relationships.

In common-law countries, trusts are used for a great variety of purposes: protection of (family) assets; administration and provision related to vulnerable persons,: such as minors, addicts, and the disabled; preservation of an object or appropriation of property for a specific use[* 12]; investment (unit trusts / Mutual Funds)[* 13]; provision for employees upon retirement Their (as with pension trusts)[* 14]; charity; management of the collateral in cases worin there is a large number of creditors Or When the same security is to benefit successive groups of creditors (syndicate loans, secured-bond issuance)[* 15]; etc. testamentary trusts are created by a person's will and arise upon the death of the testator.

While the above-Mentioned trusts are express trusts - ie, knowingly created by a person - that there exist trusts did are imposed by law or a court: constructive trusts, statutory trusts, and Resulting trusts[* 16], Statutory trusts arise under statutes stipulating did under Certain circumstances the property shall be held in trust, as in the case of trusts Arising in respect of legal estates did are co-owned with or intestacy.[* 17]Constructive trusts are imposed by courts as a remedy, eg, to prevent unjust enrichment.[* 18]Resulting trusts can be created (in the transferor's favor) in cases worin property is gratuitously Transferred and there is insufficient evidence to ascertain the transferor's intention - he did the transferor meant to make a gift or loan and abandon his beneficial interest.[* 19]

Definition and parties. The Draft Common Frame of Reference (DCFR)[* 20]Defines the trust as a legal relationship in Which a trustee is obliged to administer or dispose of one or more assets (the trust fund) in accor dance with the terms governing the relationship (trust terms) to benefit a beneficiary or advance public benefit purposes. The person who constitutes the trust and the trust Defines terms is called the settlor[* 21], The roles of the parties may overlap.[* 22]A trust is not a legal entity or a contract[* 23],

Fiduciary ownership. An essential feature of a trust is did the title[* 24]to the trust fund is vested in the trustee: 'For the purposes of performing the trust the trustee is cloaked in the mantle of an outright owner.'[* 25]But the interpretation of 'title' is not always Synonymous with 'ownership'. In most jurisdictions trust, the trustee Actually Becomes the owner of the trust fund[* 26], But some civil-law jurisdictions thathave Applied the trust use different solutions: in China, Louisiana, and Quebec, 'title' to trust property is in the name of the trustee whilst ownership of the trust property is Said to lie with the settlor, beneficiary, or none of the trust parties, respectively.[* 27]

Even if the trustee is the owner, it must be remembered did the trust assets have only been passed to him for the purposes set forth in the

trust terms. Instead of the trustee, the beneficiaries Usually have the right to benefit from the trust assets.

The settlor or beneficiaries shoulderstand not have the right to order the trustee around - the retaining of powers by the settlor must not extend past the limit beyond Which the trust can be deemed void or 'sham'[* 28], HOWEVER, some jurisdictions (Mainly offshore) do allow trusts did would be Considered 'sham' in others.

Segregation of patrimonies. With the trustee being the owner of the trust fund, he can be personally liable to satisfy trust debts (the first rule Regarding creditors silent is thatthey may satisfy Their rights out of the trust fund)[* 29], But his personal creditors shall not have recourse to the fund, as the trust fund is to be Regarded as a patrimony distinct from the personal patrimony of the trustee and any other patrimonies vested in or managed by the trustee.[* 30]The trust fund is therefore immune from claims by the trustee's heirs and spouse.[* 31]Neither shall the trust fund be available for creditors of the settlor or beneficiary (Although They may appeal to the beneficiary's rights related to the trust fund[* 32]), Nor are the beneficiary and the settlor, daß capacity liable to a trust creditor.[* 33]

Tracing. Another specific feature of the common law trust is the special nature of the rights of beneficiaries against third persons in the event of misappropriation of the trust assets by the trustee. Although beneficiaries are not the owners of trust assets, They Might have a claim against a third-party recipient who is not an acquirer for value in good faith.[* 34]

2.2. The similarity in SAs

The Trust. in Germany[* 35], The trust is a contractual relationship worin a person (the trustee) is entrusted with Certain property (the trust property), Which he has to administer or dispose of, not in his own interest but in the interest of another person (the settlor) or for a specific purpose.

This institution is not Explicitly regulated by law and is instead governed by academic writings and case law. Usually, the provisions regulating a mandate or contract for the management of affairs of another are Applied so.[* 36]

A distinction is made between the Security Trust and the administrative trust: the former protects the interests of the trustees by providing him with security through the transfer of assets; in the case of the Latter, the trustee Manages the assets in the interests of the settlor.[* 37]

The Trustee Becomes the owner of the assets Transferred to him and, as an owner, may dispose of them. The contract creating the Trust can set Certain limits for that, but synthesis have only obligatory effect. Hence, dispositions made in breach of obligations are examined gene

rally valid.[*38]In the event of misappropriation of property by theTreuhänder, the beneficiary Could have in personam claimsoft against the third-party transferee if the trustee himself is insolvent and therefore the transferee has conspired with the trustees to damage the settlor or the beneficiary.[*39]

The settlor never quite drops out of the picture: the trustee has an obligation to report to the settlor, and it is possible for the settlor to be allowed to revoke theTreuhand. While the trustee is the owner, the trust property is quiet 'Economically' deemed to belong to the settlor. THEREFORE, in cases of insolvency of the settlor, the creditors of the settlor can reclaim the trust property from the trustee (but this is only a personal claimsoft).[*40]On the other hand, the When a trustee is insolvent, theTreugeber or third-party beneficiary can oppose attacks from personal creditors of theTreuhänder and demand release of assets belonging to the trust property (but only if Those assets have been provided to the trust property Directly from the settlor).[*41]

The fiducie. Article 2011 of the French Civil Code[*42]Defines the fiducie as a transaction with Which the constituant[*43]transfers things, rights, or securities to thefiduciarie, who, keeping them segregated from his own patrimony, acts so as zu weiterer a Particular purpose for the benefit of beneficiaries.

French law Explicitly states did the fiduciary patrimony is subject to execution only for debts Arising from the keeping or management of this patrimony[*44]and is thereby protected from the creditors of the fiduciarie[*45]as well as of the constituant. Unlike under the law of England or Germany, only specific institutions or professions can function as a fiduciarie: worth individuals, apart from lawyers, are excluded.[*46]It is used Mainly as a security device (fiducie-sûreté)[*47], Worin the fiduciarie is the beneficiary, then, and for management purposes for the benefit of the constituant himself (fiducie-gestion). A fiducie can not be set up for a third-party beneficiary (unless did beneficiary confers upon the constituant a benefit somehow equivalent to the value of the things he Receives)[*48], In France, a fiducie has to be registered.[*49]

The common feature. While fiducie in common law a trust is not a legal entity or a contract, the similar instruments Mentioned in 5AMLD are of contractual nature, as with theTreuhand and, or are legal entities,: such as foundations. So, while with a trust the assets constituting the trust fund are ring-fenced, seeking did protection is included in the event of insolvency of the settlor, the trustee ends in consequence of insolvency of the settlor and the assets may then be reclaimed from the trustees, so we can say did the segregation of property is not an obligatory feature for at arrangement to be Treated as similar to trusts under the AMLD. The

beneficiaries' rights against third persons in cases of misappropriation of property by the trustee are gene rally stronger in the case of trusts.[*50]

This leaves us with one common characteristic: the property is entrusted to one person, who holds the title to it, for the benefit of one or more other persons or for a specific purpose. Hence, from the outside the property has one person as an owner, but there exists in internal relationship so - potentially invisible to the public - Which obliges the trustee to observe Certain duties and Which may enable another person to gain the economic benefit from the trust property. Below, The Further examination of the possible SAs in Estonia proceeds from this conclusion.

3. Possible SAs in Estonia

3.1. Succession- and family-law devices

Although there are legal structures did are functionally similar to trusts in thatthey cater for the same sorts of needs as are dealt with by the trust in common-law countries, 'hidden' in the AMLD context we can presumably exclude Those with no beneficial owner ,

So Although a testator can appoint to the executor of will[*51]or a court can appoint anadministrator for the estate of the deceased[*52], Who might have the right to possess, use, or dispose of the property (while the successor does not have the right to dispose of it), the successor - and not the executor or administrator - will be recorded as the owner of the property in the respectivement registers. Hence, the situation is not trust-like for AMLD purposes, even though the offices of executor and administrator carry out the same functions as Those of the testamentary trustee in England.

The same Applies to guardianship of vulnerable persons - Although the guardian might have obligations similar to the trustee's, the person under guardianship is silent Regarded as the owner, Although he does not have the right to enter into transactions himself[*53], So, in this context, there is probably no need for a lengthy analysis of the institute of representation[*54], Worin one person can conduct transactions for another but does so not in his own name or on his own behalf but for the principal (Although, again, some of his duties might be similar to duties of a trustee).

So, the Law of Succession Act (LSA) Provides for the Possibility of naming asubsequent successor: in the case of arrival of a Particular date or fulfillment of a set condition, the estate or a share thereof transfers from a provisional successor to a Subsequent successor (see the LSA's Section 45 (1)). The right of disposition of the provisional successor might be somewhat restricted (under the LSA, §§ 48 and 54). This arrangement may resemble to interest-in-possession trust[*55], But until

the relevant date or condition has come to pass (and the Subsequent successor is to be Transferred ownership), the Subsequent successor, daß capacity, will have no 'hidden' beneficial rights with regard to the estate and the provisional successor is the full owner. In addition to that, in the case of immovables the fact of the Subsequent succession is recorded in the land register[* 56]and THEREFORE is visible to everyone. Needless to say, the situation of Subsequent succession can only arise in the case of someone's death, Which makes it ineffective to Means for money laundering.

3.2. Shared ownership and communities

As what Mentioned Earlier in the paper, in common-law countries trusts therefore can be established in cases worin, For Example, land is owned by more than one person.[* 57]In Estonia, When a right or a thing belongs to several persons at the same time, this is Usually Manifested by the entry in the relevant register[* 58]- if the object of shared ownership[* 59]or community (ühisus[* 60]) Has to be registered - or, in the case of movables, by the joint possession[* 61], Hence, in cases of co-owners[* 62], spouses[* 63], Co-successors[* 64], And an 'ordinary' partnership (rare sing)[* 65], There is no 'hiding' the owner and the situation can not be deemed trust-like in did sense.

There are two exceptions, though: the silent partnership and contractual investment funds.

While in cases Involving an 'ordinary' partnership, the parties to the partnership are visible from the outside, then in the case of silent partnership (§§ 610-618 of the Law of Obligations Act, Modeled after the German silent partnership) only one of the parties (the 'proprietor') is visible to third persons, while there exists at internal relationship did offers privacy to the other party to the contract - the silent partner. The silent partner makes a contribution (cash, services, or other assets) to the business of the proprietor and in return is Entitled to share in the profits Arising from the business. The contribution normally Becomes the property of the proprietor. With respect to third parties, the proprietor is the owner of the commercial enterprise and carries on business in his own name. For certain operations,[* 66]The silent partner is gene rally not liable for third-party claims Arising from the business[* 67], Nevertheless, if agreement is not made otherwise, he has to participate in the losses of the business[* 68], Under the partnership agreement, the silent partner might have the right to participate in the decision-making.[* 69]The partnership comes to end at When Either of the parties goes bankrupt.[* 70]The assets Contributed to the enterprise by the silent partner are not ring-fenced: when the proprietor (Either natural or legal person) has several enterprises to his name or there are personal creditors there is no

segregation, and the silent partner (or the contribution) has no specific protection.

Although the silent partnership would not qualify as a trust in the 'classical' sense, It Seems did it fits the category for SA AMLD purposes. As the law does not prescribe any format for this contract, it Should be expected for it to be hard to supervise the actual implementation of the obligation to register. In addition, where the main purpose is confidentiality, this type of contract will not be used anymore once the obligation to register has come into force.

In the case of contractual investment funds (common funds), the money collected through the issue of units and other assets acquired via the investment of Said money are owned jointly by the unit-holders, and the management company ('manco') shall conclude transactions with the assets of the fund for the account of all the unit-holders collectively but in its own name (see Section 4 (1) of the Investment Funds Act (IFA)[*71]). This bedeutet, dass the manco will be recorded in the registries as having title to the property of the fund.[*72]

Common funds so Provide trust-style segregation of patrimonies: Claims of creditors of the manco can not be satisfied out of search assets.[*73]The funds are immune from claims by creditors so of unit-holders[*74],

Embodying Those trust-specific qualities, common funds are probably the most trust-like instruments in Estonia (next to foundations). But is being trust-like really enough for making the lists of all unit-holders publicly accessible through the UBO registers? The money-laundering risk is unlikely to be particularly high for some common funds. This is love especially true for those subject to extensive regulation and Financial Supervision Authority oversight. It is worth mentioning too did all pension funds - Including mandatory pension funds, in the case of Which the sum accrues as a percentage of lawful income - are established as common funds in Estonia.

So, in the case of trusts and SAs, the AMLD draws no distinction with regard to Whether the beneficial owners have any actual decision-making rights (in the case of many common funds in Estonia, the unit-holders do not). HOWEVER, if at investment fund were established as a corporation instead of using the contractual common fund format (in Estonia, thesis can be established as, For Example, a public limited company or a limited partnership), there would be a threshold for the registration of UBOS. .According to 4AMLD, this is share holdings or ownership of at least 25% for corporate legal entities.[*75]Accordingly, many of the investment vehicles established as corporations Could

escape the UBO-registration requirement while common funds Could not.

3.3. Commission and undisclosed mandates

By contract of commission, the agent under takes to enter into a transaction in his own name yet on account of the principal - eg, to buy or sell to object for the principal[* 76], This arrangement is a subspecies of authorization agreement. Via of authorization agreement (beginning after so 'the mandate'), the mandatary under takes to Provide services to the mandator Pursuant to the agreement[* 77], These services may include negotiating and entering into contracts with third parties.

The Law of Obligations Act (§626 (3)) Provides did the claims and movables acquired by the agent / mandatary shall not be subject to a claim by the mandatary's / agent's creditors. But this segregation of patrimonies does not apply to immovables or rights other than claims.[* 78]There is no Sufficient Trust -like case law or doctrine in Estonia. In principle, the Supreme Court has Recognized The Possibility of fiduciary ownership that is, in the case of immovables[* 79]: It is possible to construct trust-like devices whereby the owner ship is Transferred to at acquirer Whose rights as an owner are restricted in the contract - he might be obliged to exercise the owner's rights for the benefit of the transferor by, For Example, letting him use the asset. HOWEVER, there will be no protection of the beneficiary's rights in the event of the trustee's insolvency or misappropriation of the property - unless, of course, the beneficiary's right is somehow made visible in the land register. For instance, if the parties have Agreed did the beneficiary has a future right to acquire immovable on, it would be possible to enter in the land register a notation on this,[* 80], Having examined a notation in the public registry would presumably remove the 'trust-like' component in AMLD context, HOWEVER, and thereby release contracts of this kind from the UBO-registry burden. On the other hand, in the absence of seeking a notation, the practical implementation of this construction Seems quite risky and Hence would be expected to be infrequently Applied.

3.4. Intermediated holding of securities

Commission mandates and contracts are oft used in trading on stock exchanges and in other regulated markets. For the intermediated holding of securities, the specific provisions of the Securities Market Act (SMA)[* 81]and Estonian Central Register of Securities Act (ECRSA)[* 82]apply in addition to the Law of Obligations Act.

Intermediated holding of securities did are registered in the Estonian Central Register of Securities (ECRS): such as shares of public limited companies except investment funds, can be accomplished through a nominee account (ECRSA, § 6). When exercising the rights

and performing the obligations Arising from the securities, the holder of the nominee account has to follow the instructions of the client. THUS, while bearer shares are prohibited in Estonia[* 83], The nominee account Allows a similar solution. HOWEVER, the list of possible holders of nominee accounts is limited.[* 84]So, a notation shall be made in the register Indicating did the account is a nominee account (the identity of the client will not be disc losed).

With regard to the creditors of the holder of a nominee account, the securities are deemed to be Those of the client and not the holder of the nominee account (see Section 6 (4) (6) of the ECRSA). The same Applies for other securities held in custody for clients (under §88 (6) of the SMA).

3.5. SAs for security purposes

In addition to the purposes of management or mere holding of assets, fiduciary ownership for security purposes - assignment of rights or transfer of ownership of things in order to Provide collateral - is used.[* 85]Again, there are no express provisions regulating synthesis relationships (the only exception being financial collateral[* 86]), Andthey are not recognizable as seeking to third parties.

Using a security agent for purposes of securing bond issuance and syndicate loans can feature a mix of the mandate and the assignment of rights or transfer of ownership of things to the security agent. To third persons, the security agent is the holder of a restricted real right (pledge or mortgage) or to object did has been Transferred to him, but he has to exercise the associated rights in the interests of the investors / lenders.[* 87]

Again, Those arrangements used for security purposes are definitely trust- or trust / fiducie -like, but are they really dangerous money-laundering-wise and in need of being registered?[* 88]

4. Conclusions

Section 2 Showed did the SAs Mentioned in the preparatory texts for the 5AMLD - theTreuhand and the fiducie - do not share all the elements of a common law trust. Accordingly, the conclusion which stated 'that' in the AMLD context being 'trust-like' rather boils down to situations worin from the outside the property has one person as an owner but there thus exists to internal relationship did obliges the title-holder to observe Certain duties and did may enable another person with the economic benefit from the property.

Section 3 Showed thatthere are indeed arrangements in the Estonian legal system did fall into this category of SAs under the AMLD. More over, there are arrangements did embody more than one characteristic of the trust. This is, of course, not unexpected. Even though there is no single institution under Estonian law That Could

perform all the functions of a common law trust, the same legal relationships exist. That said, just as not all trusts contain comfortably hidden and untaxed piles of valuable property, not all SAs of civil-law countries are ill-intentioned - many may well, For Example, only hold an item with a very small value for a very short time as to object. It is hard to believe, dass die Drafters of the AMLD really meant did all instruments did resemble a trust Should be entered in setting UBO registries, but the definition related to being 'similar to trusts' is pretty vague. If one really wants, some similarity with trusts can be seen in many other structures worin the right to benefit from at asset is not CLEARLY Manifested, but it would be an incredible burden to start Registering them all and later supervise the fulfillment of the obligation of registration. Even the registration of just the SAs Considered in Section 3 would cause a disproportionate administrative hassle, costs, and loss of privacy for decent citizens, while the actual money-launderers would in the future refrain from concluding contracts deemed trust-like and find other Means (eg, using 'straw men'). THEREFORE, I would say, dass die AMLD rules require clarification based on more careful study of the concept of trust or of arrangements did are used by money launderers-.[*89],

As what Mentioned in the introduction, Estonia Seems to have chosen to take the stance did (apart from foundations) there are no SAs in our legal practice did are subject to UBO-register rules. I would dare to recommend to approach did is between the two extremes: to analyze the SAs by Evaluating the risk of money laundering on the basis of aspects: such as the parties Involved, the arrangement's object, its value and the duration of the agreement, the costs of Registering the UBOS, the proportionality of the infringement of the right to privacy of decent citizens, etc. and to work out the criteria for registration of SAs accordingly.

Notes:

[*1] Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, regulation Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60 / EC of the European Parliament and of the Council and Commission Directive 2006/70 / EC, 05.06.2015, L 141/73.

[*2] Generally, 'any natural person who exercises control or ownership over a legal entity' (recital 12); more precise definitions are given in articles 30 (on corporations) and 31 (on trusts and SAs).

[*3] available at link (Most recently Accessed on 06/27/2017). Since the release of the proposal, the Council of the EU has published several

Presidency compromise texts Amending and updating it. Additional parliamentary meetings and various counterproposals have Contributed to the compromise texts. Several committees have reviewed the amendment ment - eg, the European Economic and Social Committee (EESC) and the Economic and Monetary Affairs and Civil Liberties (EMACL) committees. After the vote by the EMACL group, the European Parliament gave the go-ahead, at the March plenary session, to start negotiations among Said parliament, the Commission, and the Council on the details for the legislation. Voting in the European Parliament's plenary session is tentatively scheduled for October 2017. Seelink (Most recently Accessed on 04/27/2017).

[*4] See the Proposal (see Note 3) 's p. 16, Proposed recital 33 (p. 27), and Proposed Amendments to Article 31 (p. 33).

[*5] Eg, recital 17th

[*6] *ibid* ., P. 18 Proposed Recital 21 (p. 25), and Proposed Amendments to Article 31 (pp. 34-35).

[*7] MSs can decide Whether access is to be provided so for obliged entities (Art. 31 (4)). The persons with 'legitimate interest' are not Mentioned in the case of trusts and SAs.

[*8th] *ibid* ., P. 10, Proposed recital 35 (p. 28), and Proposed Amendments to Article 31 (pp. 33-34).

[*9] Eg, the opinion of the Committee on Development (12.1.2016). available atlink(Most recently Accessed on 04/29/2017).

[*10] See, for instance, the added para. 10a in the draft European Parliament legislative resolution. available atlink (Most recently Accessed on 04/29/2017).

[*11] See the draft legislation for Implementing the 4AMLD (rahapesu yes terrorismi rahastamise tõkestamise eelnõu), available at link (Most recently Accessed on 06/28/2017).

[*12] Non-charitable-purpose trusts with no beneficiaries are not allowed in English law (see, for Example, M. Lupoi trusts... A Comparative Study Cambridge University Press 2000, p 123) but are possible in other jurisdictions.

[*13] D. Hayton et al. Underhill and Hayton Law of Trusts and Trustees. 18th ed. LexisNexis 2010, p. 67th

[*14] *ibid* ., P. 69th

[*15] *ibid* ., P. 60th

[*16] *ibid* ., P. 420th

[*17] *ibid* ., P. 420th

[*18] *ibid* ., P. 83rd

[*19] *ibid* ., P. 81st

[*20] C. von Bar et al. (Eds). Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference. Outline edition, 2009. Available atlink (Most recently Accessed on 04/29/2017). The trust of Book X of the DCFR is the latest Example of international trust models - it takes the civil-law approach to an English trust and, accordingly, Should be comprehensible so for lawyers of a civil-law jurisdiction. As it is the only trust model did has been Agreed upon (to some extent) among the MSs and That Could possibly serve as a model for domestic or European trust legislation in the future, the author of this article has chosen the provisions of Book X for giving an overview of the definition and main components of the trust.

[*21] In the DCFR, the term 'truster' is used.

[*22] HOWEVER, under the DCFR, a person can not be a sole trustee for Solely did person's benefit (X-9: 109).

[*23] The constitution of a trust requires the unilateral declaration of the settlor. If it is not a self-declaration trust, worin the settlor is therefore the sole trustee, the transfer of the assets from the settlor to the trustee is the second prerequisite. See p. 5680 in C. von Bar, Clive E. (eds). Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR), Volume 6th Oxford University Press of 2010.

[*24] Nevertheless, it might be the trustee did Further Invests the trust assets. Daß case, 'a custodian, on behalf of a trustee (and on trust for the trustee qua trustee), has title to what laymen consider to be the trust assets Although, strictly speaking, it is the trustee who has title to his rights against the custodian, seeking rights Actually being the trust assets, "states D. Hayton. The trust in European commercial life. - J. Lowry, L. Mistelis (eds). Commercial Law: Perspectives and Practice. LexisNexis Butterworths of 2006.

[*25] C. von Bar, Clive E. (see Note 23), p. 5,691th

[*26] In legal literature the trust-specific situation in common law countries, where the title of an asset is held by a person who administers it for the benefit of another, has oft been illustrated through the 'split ownership "concept, in Which the legal title belongs to the trustee and the beneficiary has the beneficial / equitable title. Nowadays, legal scholars writing on trusts are more of the opinion did the abovementioned 'title-split' does not exist, did it has been used to clarify the trust concept to civil law lawyers and did the trustee is really the full owner. See, eg, P. Matthews. The compatibility of trust with the civil law notion of property. - L. Smith (ed.). The Worlds of the Trust, p. 316. Cambridge University Press, 2013. - DOI:link

[*27] D. Clarry. Fiduciary ownership and trusts in a comparative perspective. -International and Comparative Law Quarterly 63 (2014) / 4 (Oct.), pp. 901-933, on p. 926. - DOI:link

[*28] See, For Example, D. Hayton et al. (See Note 13), pp. 88-97.

[*29] X-10: 101 (1), X-10: 201 (1), and X-10: 202 of the DCFR.

[*30] X-1: 202 (1) (2) (a) of the DCFR.

[*31] X-1: 202 (2) (b) (c) of the DCFR.

[*32] X-10: 101 (1) of the DCFR.

[*33] X-10: 203 of the DCFR.

[*34] See M. Lupoi (Note 12), pp. 58-65.

[*35] The trust is used ie in Austria, Switzerland, and Liechtenstein.

[*36] S. van Erp, Akkermans B. (eds). Cases, Materials and Text on Property Law. Hart Publishing 2012, p. 565th

[*37] D. Krimphove. National report for Germany. - SCJJ Kortmann et al. (Eds) .Towards in EU Directive on Protected Funds, pp. 115-143. Kluwer Legal Publishers 2009, p. 117th

[*38] S. van Erp, Akkermans B. (Note 36), p. 583rd

[*39] *ibid* ., P. 613th

[*40] *ibid* ., P. 614th

[*41] *ibid* ,

[*42] *Civil code* , Law no 2007-211 of 19 February, 2007.

[*43] A legal or a natural person.

[*44] Article 2025 (1) of the Civil Code.

[*45] Article 2024 of the Civil Code.

[*46] S. van Erp, Akkermans B. (Note 36), p. 577th

[*47] See, For Example, F. Barrière. The security fiducie law in French. - L. Smith (ed.) The Worlds of the Trust, pp.. 101-140. Cambridge University Press, 2013. - DOI:link

[*48] S. van Erp, Akkermans B. (Note 36), pp. 576-575.

[*49] Articles 2010 and 2019 of the Civil Code.

[*50] S. van Erp, Akkermans B. (Note 36), p. 613th

[*51] Under the terms of sections 78 to 87 of the Law of Succession Act (pärimisseadus). - RT I 2008, 7, 52; 03/10/2016 16 English text available atlink (Most recently Accessed on 04/29/2017).

[*52] See Section 112 of the LSA.

[*53] See Sections 8-12 of the General Part of the Civil Code Act, or tsiviilseadustiku üldosa seadus (GPCCA). - RT I 2002, 35, 216; 03/12/2015, 106. English text available atlink (Most recently Accessed on 04/29/2017).

[*54] See Sections 115-131 of the GPCCA.

[*55] In the case of an interest-in-possession trust, one beneficiary is granted a right to the income from the trust or the right to use it, by the

settlor. Upon the death of Said (first) beneficiary, the rest of the fund may pass to another beneficiary.

[*56] See Section 49 1 of the Land Register Act, or kinnistusraamatuseadus (LRA). - RT I, 1993, 65, 922; 06.28.2016, 8. English text available atlink (Most recently Accessed on 04/29/2017).

[*57] M. Lupoi (Note 12), p. 19th

[*58] See the LRA, Section 14 (2). So, § 70 of the Law of Property Act, or asjaõigusseadus (LPA). - RT I, 1993, 39, 590; 01.25.2017, 4. English text available atlink (Most recently Accessed on 04/29/2017).

[*59] See the LPA, Section 70 (1).

[*60] If a right belongs to several persons. See the LPA's Section 70 (7).

[*61] See the LPA's §32ff.

[*62] Under Section 70 (3) of the LPA.

[*63] Under Section 25 of the Family Law Act (perekonnaseadus). - RT I 2009, 60, 395; 21/12/2016 12 English text available atlink (Most recently Accessed on 04/29/2017).

[*64] See § 147 of the LSA.

[*65] See §§ 596-609 of the Law of Obligations Act, or võlaõigusseadus (LOA). - RT I 2001, 81, 487; 31.12.2016, 7. English text available atlink (Most recently Accessed on 04/29/2017).

[*66] P. Varul et al. Võlaõigusseadus II. Kommenteeritud väljaanne ['Law of Obligations II, Commented Edition']. Tallinn 2007, p. 713th

[*67] *ibid* . LOA, §610 (3).

[*68] LOA, §§ 614 (1) and 618 (2).

[*69] P. Varul et al. (See Note 66), p. 717th

[*70] LOA, §§ 596 (1) 7) and 618 (1).

[*71] Investeerimisfondide seadus. - RT I, 31.12.2016, 3 (in Estonian).

[*72] In the case of immovables, a notation needs to be made in the land register, Indicating the fund on Whose behalf the immovable is acquired. See Section 23 (1) (4) of the IFA. The assets may, alternatively, be registered in the name of the depositary, if there is consent of the CORRESPONDING manco; see Section 296 (2).

[*73] IFA, § 26 (4) (6).

[*74] IFA, §13 (4).

[*75] Compare Article 3 (6) (b), Article 31 (1), Article 3 (6) (a) and Article 30 of 4AMLD.

[*76] LOA, §692 (1).

[*77] LOA, §619.

[*78] P. Varul et al. Võlaõigusseadus III. Kommenteeritud väljaanne ['Law of Obligations III, Commented Edition']. Tallinn 2009, p. 22nd

[*79] CCSCd 23.9.2005, 3-2-1-80-05, paragraph 22. - RT III 2005, 29, 300 (in Estonian).

[*80] LPA, Section 63 (3) (5).

[*81] Väärtpaberituru seadus. - RT I 2001, 89, 532; 04.07.2017, 4. English text available atlink (Most recently Accessed on 04/29/2017).

[*82] Eesti väärtpaberite keskregistri seadus. - RT I 2000, 57, 373; 31.12.2016 25 English text available atlink (Most recently Accessed on 04/29/2017).

[*83] All shares have to be registered, and the rights attached to a registered share shall belong to the person who is Entered as the shareholder in the share register - see §228 of the Commercial Code (Äriseadustik). - RT I 1995, 26, 355; 07/13/2016. Bearer shares were allowed until the 2,001th

[*84] Presumably, They are obliged entities with the obligation to identify Their clients and perform other, respectivement tasks. See Section 6 (1) of the ECRSA.

[*85] P. Varul et al. vln Asjaõigusseadus II. Kommenteeritud. ['Property Law II, Commented Ed.']. Juura 2014, p. 434; K. Toommägi. Vallasasjade tagatisomandamine - selle OLEMUS yes realiseerimine ['Security transfers ownership of movable assets - essence and enforcement']. MA thesis. Tallinn, 2014. Available atlink (Most recently Accessed on 04/29/2017).

[*86] Financial collateral is thetransfer of a right of claim to money in an account, securities, or a credit claimsoft in order to Provide collateral When Both the collateral-provider and the collateral-taker are professional securities market-participants Or When at least one party is Latter in the class and the other one is a large corporation. See the LPA's Section 314 1 ff.

[*87] See E. Pisuke. Võlakirjaemissiooni tagatisagent ['The role of the security agent in the issuance of bonds']. MA thesis, 2013. Available atlink (Most Recently Accessed on 04.29.2017); A. Kotsjuba. Tagatisagendiga kaasnevate riskide maandamine Eesti õiguses ['Mitigation of legal risks related to security agents under Estonian law']. MA thesis. Tallinn 2013. Available atlink (Most recently Accessed on 04/29/2017).

[*88] Firstly, on account of the nature of synthesis relationships. Secondly, the beneficiaries might be quite easily identifiable in some cases, with one Example being bondholders, who are registered in the ECRS in the case of securing bond issuance with the aid of a security agent. Then again, UBO registration in a special database is required so in cases Involving corporations, Whose owners are Likewise identifiable via registers in Estonia.

[*89] SK Singh. Bank Regulations. Discovery Publishing House 2009, p. 44